

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
BRUNSWICK DIVISION**

BRANNOC K. RUDD,

Petitioner,

v.

WARDEN D. EDGE,

Respondent.

CIVIL ACTION NO.: 2:18-cv-87

**ORDER AND MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

Petitioner Brannoc Rudd (“Rudd”), who was formerly incarcerated at the Federal Correctional Institution in Jesup, Georgia, filed a 28 U.S.C. § 2241 Petition for Writ of Habeas Corpus. Doc. 1. Rudd has filed a notice of change of address, which reveals he is no longer incarcerated. Doc. 3. For the reasons which follow, I **RECOMMEND** the Court **DENY as moot** Rudd’s Petition, **DIRECT** the Clerk of Court to **CLOSE** this case and enter the appropriate judgment of dismissal, and **DENY** Rudd leave to appeal *in forma pauperis*.

**BACKGROUND**

Rudd was convicted in the Southern District of Florida of conspiracy to commit an offense against the United States, in violation of 18 U.S.C. § 371. Doc. 1 at 2. He was released from federal custody on June 18, 2019. <https://www.bop.gov/inmateloc/>, search for “Rudd, Brannoc,” Register Number 05375-104, last accessed Feb. 5, 2020.

## DISCUSSION

### I. Whether Rudd's Petition is Moot

In his Petition, Rudd states he has been falsely incarcerated for over three years' time. Doc. 1 at 3. Rudd also asserts his conviction is a miscarriage of justice, and he seeks his immediate release from custody. Id. at 4.

Article III of the Constitution "extends the jurisdiction of federal courts to only 'Cases' and 'Controversies.'" Strickland v. Alexander, 772 F.3d 876, 882 (11th Cir. 2014). This "case-or-controversy restriction imposes" what is "generally referred to as 'justiciability' limitations." Id. There are "three strands of justiciability doctrine—standing, ripeness, and mootness—that go to the heart of the Article III case or controversy requirement." Harrell v. The Fla. Bar, 608 F.3d 1241, 1247 (11th Cir. 2010) (internal quotation marks and alterations omitted). Regarding the mootness strand, the United States Supreme Court has made clear that "a federal court has no authority 'to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.'" Church of Scientology of Cal. v. United States, 506 U.S. 9, 12 (1992) (internal citation omitted). Accordingly, "[a]n issue is moot when it no longer presents a live controversy with respect to which the court can give meaningful relief." Friends of Everglades v. S. Fla. Water Mgmt. Dist., 570 F.3d 1210, 1216 (11th Cir. 2009) (internal quotation marks omitted). Questions of justiciability are not answered "simply by looking to the state of affairs at the time the suit was filed. Rather, the Supreme Court has made clear that the controversy 'must be extant at all stages of review, not merely at the time the complaint is filed.'" Christian Coal. of Fla., Inc. v. United States, 662 F.3d 1182, 1189–90 (11th Cir. 2011) (quoting Preiser v. Newkirk, 422 U.S. 395, 401 (1975)). "Events which occur subsequent to the filing of a petition may render the

matter moot.” Johnson v. Glover, No. 1:04-CV-413, 2006 WL 1008986, at \*1 (M.D. Ala. Apr. 18, 2006) (citing Nat’l Black Police Ass’n v. District of Columbia, 108 F.3d 346, 350 (D.C. Cir. 1997)). A “mootness issue quite clearly can be raised *sua sponte*. . . .” Id. (quoting Medberry v. Crosby, 351 F.3d 1049, 1054 n.3 (11th Cir. 2003), in turn quoting Sannon v. United States, 631 F.2d 1247, 1250 (5th Cir. 1980))).

Here, Rudd requests his immediate release from custody. Doc. 1. However, Rudd was released from federal custody during the pendency of this Petition, and the Court raises the issue of the mootness of Rudd’s Petition sua sponte.<sup>1</sup> There is no longer a “live controversy” over which the Court can give meaningful relief. Friends of Everglades, 570 F.3d at 1216. Accordingly, the Court should **DENY as moot** Rudd’s Petition for Writ of Habeas Corpus.

## **II. Leave to Appeal in *Forma Pauperis***

The Court should also deny Rudd leave to appeal *in forma pauperis*. Though Rudd has not yet filed a notice of appeal, it would be appropriate to address that issue in the Court’s order of dismissal. See Fed. R. App. P. 24(a)(3) (trial court may certify that appeal is not taken in good faith “before or after the notice of appeal is filed”).

An appeal cannot be taken *in forma pauperis* if the trial court certifies, either before or after the notice of appeal is filed, that the appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). Good faith in this context must be judged by an objective standard. Busch v. County of Volusia, 189 F.R.D. 687, 691 (M.D. Fla. 1999). A party does not proceed in good faith when he seeks to advance a frivolous claim or argument. See Coppedge v. United States, 369 U.S. 438, 445 (1962). A claim or argument is frivolous when it appears the

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<sup>1</sup> Rudd is clearly attacking his conviction and sentence, and any such assertions fall under the purview of 28 U.S.C. § 2255. Doc. 1. Without wading into the relevant statutes and case law, Rudd’s Petition would likely be barred as an improperly filed § 2255 motion.

factual allegations are clearly baseless or the legal theories are indisputably meritless. Neitzke v. Williams, 490 U.S. 319, 327 (1989); Carroll v. Gross, 984 F.2d 392, 393 (11th Cir. 1993). An *in forma pauperis* action is frivolous and not brought in good faith if it is “without arguable merit either in law or fact.” Napier v. Preslicka, 314 F.3d 528, 531 (11th Cir. 2002); see also Brown v. United States, Nos. 407CV085, 403CR001, 2009 WL 307872, at \*1–2 (S.D. Ga. Feb. 9, 2009).

Based on the above analysis of Rudd’s filings, there are no non-frivolous issues to raise on appeal, and an appeal would not be taken in good faith. Thus, the Court should **DENY** Rudd *in forma pauperis* status on appeal.

### CONCLUSION

Based on the foregoing, I **RECOMMEND** the Court **DENY as moot** Rudd’s § 2241 Petition, **DIRECT** the Clerk of Court to **CLOSE** this case and enter the appropriate judgment of dismissal, and **DENY** Rudd leave to appeal *in forma pauperis*.

The Court **ORDERS** any party seeking to object to this Report and Recommendation to file specific written objections within 14 days of the date on which this Report and Recommendation is entered. Any objections asserting that the undersigned failed to address any contention raised in the pleading must also be included. Failure to do so will bar any later challenge or review of the factual findings or legal conclusions herein. See 28 U.S.C. § 636(b)(1)(C); Thomas v. Arn, 474 U.S. 140 (1985). A copy of the objections must be served upon all other parties to the action.

Upon receipt of objections meeting the specificity requirement set out above, a United States District Judge will make a de novo determination of those portions of the report, proposed findings, or recommendation to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made herein. Objections not meeting the specificity requirement set out above will not be considered by the District Judge. The Court

**DIRECTS** the Clerk of Court to serve a copy of this Report and Recommendation upon Rudd at his last known address.

**SO ORDERED** and **REPORTED** and **RECOMMENDED**, this 5th day of February, 2020.

A handwritten signature in blue ink, appearing to read 'B. Cheesbro', is written over a horizontal line.

BENJAMIN W. CHEESBRO  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF GEORGIA